
DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric
Administration****50 CFR Part 642****[Docket No. 920810-2210]****RIN 0648-AE23****Coastal Migratory Pelagic Resources
of the Gulf of Mexico and South
Atlantic****AGENCY:** National Marine Fisheries
Service (NMFS) NOAA, Commerce.**ACTION:** Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 6 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This proposed rule would: Allow the earned income requirement for a commercial vessel permit for king or Spanish mackerel to be met in any one of the 3 years preceding the permit application; change the fishing year for recreational bag limits to the calendar year; remove the provisions for reducing a recreational bag limit to zero during a fishing year; increase the minimum size limit for king mackerel to 20 inches (50.8 cm); implement commercial vessel trip limits for Atlantic migratory group Spanish mackerel; and make corrections and clarifications to the regulations to conform them to current usage. In

addition, Amendment 6 would: Revise the problems and objectives of the FMP; specify periods for rebuilding overfished stocks; change the required frequency of stock assessments from annual to biennial; add to the management measures that may be implemented or modified by the framework procedure; and provide for the establishment of separate subgroups and allocations of the Gulf migratory group of king mackerel, divided at the Florida/Alabama boundary, when the assessment panel is able to provide ranges of acceptable biological catch for the subgroups. This rule and Amendment 6 are intended to protect the coastal migratory pelagic resources from overfishing, continue stock rebuilding programs of king and Spanish mackerel while allowing catches by important recreational and commercial fisheries dependent on them, improve management of the resources, and clarify the regulations.

DATES: Written comments must be received on or before October 8, 1992.

ADDRESSES: Copies of Amendment 6, which includes an environmental assessment/regulatory impact review/initial regulatory flexibility analysis may be obtained from the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, suite 331, Tampa, FL 33609, or from the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407-4699.

Comments on the proposed rule should be sent to Mark F. Godcharles, NMFS, Southeast Regional Office, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 6 Changes to the Regulations

In accordance with Amendment 6 to the FMP, this proposed rule would allow the earned income requirement for a commercial vessel permit for king or Spanish mackerel to be met in any one of the 3 years preceding the permit application. Currently, the owner or

operator of a vessel must document that at least 10 percent of his or her earned income during the calendar year preceding the application was derived from commercial fishing, that is, sale of catch. An earned income requirement based solely on the previous year's earned income has caused undue hardship on some individuals who qualify as long-term commercial fishermen but who were unable to fish because of illness or temporary loss of vessel during the preceding year. This rule would alleviate these hardship cases while still restricting non-commercial fishermen to the bag limits.

This proposed rule would change the fishing year for recreational bag limits to the calendar year. Currently, the fishing year for recreational allocations and bag limits commences on July 1 for Gulf group king mackerel and on April 1 for all other groups of king and Spanish mackerel. In recent years, the Councils have recommended bag limits in April but they have not been implemented until July or August, after the fishing years have started. Fishing years for the recreational bag limits commencing on January 1 will provide ample time for Federal implementation, will provide the states an opportunity to adopt compatible regulations applicable to their waters, and will provide a standard date on which recreational fishermen may expect any changes in bag limits.

This proposed rule would also remove the procedure whereby a bag limit for king or Spanish mackerel is reduced to zero when the recreational allocation for an overfished migratory group is reached. In lieu thereof, the recreational fishery would be managed by bag limits that would remain unchanged through the fishing year. Allowing a bag limit to remain unchanged provides equal opportunity and access to anglers in all geographic areas through which king and Spanish mackerel may migrate during that year. The Councils believe this change would encourage states to set bag limits applicable to their waters that are consistent with the bag limits in the exclusive economic zone.

With reliance on the bag limits for management of the recreational mackerel fisheries, the recreational allocations would no longer be specified in the regulations. However, the Councils would continue to propose recreational allocations and bag limits via the framework procedure. Amendment 6 proposes that, if the Director Southeast Region, NMFS, determines that a Council-proposed bag limit for an overfished group of Gulf king mackerel would result in exceeding the approved recreational allocations for

such group, the Council-proposed bag limit for that group will be disapproved and a bag limit of one per person per day will be implemented in its place.

This proposed rule would increase the minimum size limit for king mackerel to 20 inches (50.8 cm), fork length, from the current minimum size limit of 12 inches (30.5 cm), fork length. The proposed change would increase the yield per recruit and allow more king mackerel to reach sexual maturity. The commercial fishery would be relatively unaffected because few small fish are taken with commercial gear. Catch in the recreational fishery would be expected to be reduced, thereby reducing the likelihood that the recreational allocations would be exceeded under the management regime of controlling recreational catch solely by the bag limits. To prevent confusion and enhance enforceability, this rule would remove the equivalent total lengths for the prescribed fork lengths.

This proposed rule would establish commercial vessel trip limits, expressed as possession and landing limits, for Atlantic group Spanish mackerel. In the northern zone, north of the Florida/Georgia boundary, the limit would be 3,500 pounds (1,588 kg). In the southern zone, south of the Florida/Georgia boundary, the limits would vary depending on the season and the amount of Spanish mackerel caught relative to the commercial allocation. (The specific trip limits for the southern zone are located in the proposed codified text under § 642.27(a)(2)). Trip limits in the southern zone would be expected to be compatible with similar limits applicable to Florida's waters. The commercial vessel trip limits in the southern zone are intended to extend the harvest season and to allocate fairly the available resource among users. Under ideal weather conditions and availability of Spanish mackerel, the Florida east coast gillnet fishery has the capacity to harvest over 400,000 pounds (181,439 kg) per day. Unlimited, gillnet fishermen could take most of the commercial allocation within a week.

The adjusted allocation of Atlantic migratory group Spanish mackerel upon which the trip limit segments would be based would be 3.25 million pounds (1.47 million kg). This adjusted allocation is the commercial allocation for Atlantic migratory group Spanish mackerel reduced by a revised amount calculated to allow continued harvests of Atlantic group Spanish mackerel at the rate of 500 pounds (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. The Assistant Administrator

for Fisheries, NOAA (Assistant Administrator), by publication of a notice in the *Federal Register*, would announce when 80 percent and 100 percent of the adjusted allocation is reached or is projected to be reached, thus initiating a new trip limit segment.

Additional Changes in Amendment 6

Amendment 6 would change the FMP's list of problems in the fishery by revising three of the problems and adding three additional problems. An additional management objective would be added.

Amendment 6 would establish recovery periods not to exceed 12 years, starting in 1985, and 7 years, starting in 1987, for rebuilding overfished stocks of king and Spanish mackerel, respectively. These proposed recovery periods are slightly more than the generation time for each species. The Councils believe the proposed recovery periods are appropriate time frames for remedial management measures to be effective without closing the fisheries or otherwise having a severe economic or social impact on participants in the fisheries.

Under Amendment 6, an assessment group appointed by the Councils would normally reassess the condition of each stock of king mackerel, Spanish mackerel, and cobia in alternate years, rather than annually. The Councils believe that annual assessments are unnecessarily frequent and that changes over such a brief time span are difficult to measure.

Amendment 6 would add to the management measures that may be established or modified via the framework procedure of the following: size limits, vessel trip limits, adjusted allocations applicable to vessel trip limits, closed seasons or areas, and gear restrictions. These additions would provide the Councils and NMFS greater flexibility in responding efficiently to management needs to restore overfished stocks and achieve optimum yield.

Under Amendment 6, when the Councils' stock assessment panel is able to provide ranges of acceptable biological catch for separate subgroups within the Gulf migratory group of king mackerel, the subgroups will be separated at the Florida/Alabama boundary. Within each subgroup, recreational/commercial allocations would continue at 68/32 percent of the total allowable catch. The Councils believe separation of Gulf migratory group king mackerel could provide a better opportunity to address the management requirements of each subgroup.

A more detailed discussion of these measures and of the revised problems and objectives of the FMP is contained in Amendment 6, the availability of which was announced in the *Federal Register* on August 17, 1992 (57 FR 36972).

Additional Changes Proposed by NMFS

NMFS proposes to remove definitions and figures that are no longer used or needed. The definition for "charter vessel," which includes a headboat, is revised to conform to current usage. To conform the regulations to current standards and to incorporate the changes in Amendment 6, NMFS proposes to restate the prohibitions (§ 642.7) and the management measures (subpart B) in their entirety. In general, the management measures would progress from general to specific provisions. Sale of undersized fish not lawfully possessed would be prohibited as would attempts to sell such fish or fish taken from a closed species/migratory group/zone. In addition, NMFS proposes to remove the specifics of (1) the procedures and restrictions to prevent gear conflicts in the area off the east coast of Florida, and (2) the procedures and limitations applicable to the framework procedure for establishing or modifying certain management measures. In both cases, the specifics apply to the Councils and NMFS but are not regulatory in nature; that is, they do not control the behavior of fishermen. The procedures, restrictions and limitations, and the Councils' definition of "conflict," would remain in effect as part of the FMP, as amended. The framework procedure, as it would apply if Amendment 6 is approved, is succinctly presented in Appendix I of Amendment 6.

Under the current framework procedures, NMFS proposed changes in certain of the allocations, quotas, and bag limits for king and Spanish mackerel (57 FR 33924, July 31, 1992). Those framework changes are expected to be approved or disapproved prior to decisions on approval, disapproval, or partial disapproval of Amendment 6. The bag limits in § 642.24(a)(1) and the commercial allocations and quotas in § 642.25(a) and (b) of this proposed rule are those proposed at 57 FR 33924. In the event all or part of the framework changes are disapproved, concomitant changes in the allocations, quotas, and bag limits in this proposed rule may be required.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary of Commerce (Secretary) to publish

regulations proposed by a council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 6, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Councils prepared a regulatory impact review (RIR) that concludes that this rule is expected to have the economic effects summarized as follows. Allowing the earned income requirement for a commercial vessel permit for mackerels to be met in any one of the 3 years preceding the permit application would have positive benefits in terms of equity to fishermen and the quality of the permits issued. Changing the fishing year for recreational fisheries to the calendar year would not have directly measurable effects but would reduce enforcement costs if the January 1 implementation of changes in Federal bag limits enables states to enact compatible bag limits in their waters. Removing the provision for reversion of a bag limit to zero when a recreational allocation is reached would have positive benefits for recreational fishermen and would reduce enforcement costs. Increasing the minimum size limit for king mackerel may increase the angler consumer surplus. Commercial trip limits for Atlantic group Spanish mackerel would increase enforcement costs but would have positive benefits for the commercial sector. A copy of the RIR,

which also evaluates the economic effects of the other measures contained in Amendment 6, is available from the Councils (see ADDRESSES).

The Councils prepared an initial regulatory flexibility analysis (IRFA) as part of the RIR, which concludes that this proposed rule, if adopted, would have significant economic effects on a substantial number of small entities. Specifically, commercial trip limits for Atlantic group Spanish mackerel are likely to decrease gross revenues for large vessels and increase gross revenues for small vessels. A copy of the IRFA is available from the Councils (see ADDRESSES).

The Councils prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA is available and comments on it are requested (see ADDRESSES).

NMFS conducted a consultation under section 7 of the Endangered Species Act (ESA) and prepared a biological opinion concerning this rule. As a result of the review of information available on the biology and ecology of the endangered and threatened species (listed species) in the area of management of coastal migratory pelagic resources, NMFS determined that: (1) Amendment 6 does not contain any regulatory changes that would adversely affect listed species of sea turtles, marine mammals, or fish, or their respective habitats; (2) the fisheries for coastal migratory pelagic resources will not jeopardize the continued existence of any listed species; (3) the gillnet fisheries may adversely affect the recovery of listed species of sea turtles; and (4) additional information on the extent of incidental take of listed species of sea turtles by gillnets is needed. The conservation recommendations of the biological opinion are that NMFS should: (1) Continue to collect and evaluate stranding and entanglement data as an additional means of determining trends in fishery interactions; and (2) encourage states to adopt necessary management measures that will reduce the potential for endangered species entanglements in inshore fishing gear. In compliance with ESA requirements for actions that may involve a take of listed species, NMFS issued an Incidental Take Statement (ITS) specifying the impact of the incidental takings and specifying reasonable and prudent measures necessary to minimize impacts of the fisheries for coastal migratory pelagic resources. Those reasonable and prudent measures include: (1) NMFS should implement a regional observer program to document incidental capture,

injury, and mortality of listed species, with emphasis on gillnet and longline fisheries; (2) regulations should be implemented to reduce/eliminate mortalities in any fisheries where the take of listed species exceeds levels specified in the ITS; (3) all incidents of take of listed species must be reported to NMFS within 10 days of the take; and (4) any sea turtle incidentally taken must be handled with due care to prevent injury, observed for activity, and returned to the water, as specified in 50 CFR 227.72(e)(1)(i).

The Councils have determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of Alabama, Florida, Delaware, Maryland, Louisiana, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, and Virginia. Georgia and Texas do not participate in the coastal management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12812.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 21, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 642.1 [Amended]

2. In § 642.1, in paragraph (a), the word "developed" is revised to read "prepared".

3. In § 642.2, the definitions for "Acceptable biological catch (ABC)", "Allocation", "Charter vessel crew", "Conflict", "Overfished", "Overfishing", "Recreational fishery", "Species", "Total allowable catch (TAC)", and

"Total length" are removed; in the definition for "Councils", paragraphs (a) and (b) are redesignated as paragraphs (1) and (2), and in newly designated paragraph (2), "Suite 881" is revised to read "Suite 331"; in the definition for "EEZ", paragraphs (a), (b), and (c) are redesignated as paragraphs (1), (2), and (3); in the definition for "Science and Research Director", the phrase "Southeast Fisheries Center" is revised to read "Southeast Fisheries Science Center"; in the definition for "Statistical area", the reference "Figure 3" is revised to read "Figures 1 and 2 of this part"; and the definitions for "Charter vessel" and "Migratory group" are revised to read as follows:

§ 642.2 Definitions.

Charter vessel (includes a headboat) means a vessel—

(1) Less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year; or

(2) That holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire.

A charter vessel with a permit to fish under a commercial allocation for king or Spanish mackerel is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

Migratory group means a group of fish that may or may not be a separate genetic stock but which may be treated as a separate stock for management purposes. (See § 642.21(a) for the seasonal, geographical boundaries between migratory groups of king mackerel and § 642.21(b) for the geographical boundary between migratory groups of Spanish mackerel.)

4. In § 642.4, paragraphs (a)(1)(i), (a)(1)(ii), and (b)(2)(vi) are revised to read as follows:

§ 642.4 Permits and fees.

(a) . . .
(1) . . .

(i) For a person who fishes aboard a vessel in the EEZ to be eligible for the incidental catch allowance for undersized king and Spanish mackerel specified in § 642.23(b), to be eligible for exemption from the bag limits specified in § 642.24(a), and to fish under a commercial allocation specified in § 642.2 (a) or (b), a vessel permit for king

and Spanish mackerel must be issued to the vessel and be on board.

(ii) A vessel permit for king and Spanish mackerel may be obtained by a qualifying owner or operator of a charter vessel. However, a person aboard such vessel must adhere to the bag limits when the vessel is operating as a charter vessel.

(b) . . .
(2) . . .

(vi) A sworn statement by the applicant certifying that, during one of the 3 calendar years preceding the application, at least 10 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch;

5. In § 642.5, in paragraph (a) introductory text, the phrase "under § 642.4(a)(1)" is revised to read "for king and Spanish mackerel"; in paragraph (a)(3), the parenthetical phrase "(see figure 3)" is revised to read "(see figures 1 and 2 of this part)"; in paragraph (b) introductory text, the phrase "permit under § 642.4(a)(2)" is revised to read "charter vessel permit for coastal migratory pelagic fish"; and in paragraphs (e) and (f) are revised to read as follows:

§ 642.5 Recordkeeping and reporting.

(e) *Availability of fish for inspection.* An owner or operator of a vessel, a dealer, or a processor must make any coastal migratory pelagic fish, or parts thereof, available, upon request, for inspection by the Science and Research Director for the collection of additional information or by an authorized officer.

(f) *Alternate Science and Research Director.* For the purposes of paragraphs (c) and (e) of this section, in the states from New York through Virginia, or in the waters off those states, the term "Science and Research Director" means the Science and Research Director, Northeast Fisheries Science Center, NMFS, Woods Hole, MA 02543, telephone 508-548-5123, or a designee.

6. Section 642.7 is revised to read as follows:

§ 642.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for coastal migratory pelagic fish in the EEZ, or possess a coastal migratory pelagic fish in or from the EEZ, aboard a charter vessel that does not have a permit, as specified in § 642.4(a)(2).

(b) Falsify information specified in § 642.4(b)(2) or (c)(2) on an application for a permit.

(c) Fail to display a permit, as specified in § 642.4(h).

(d) Falsify or fail to maintain, submit, or provide information required to be maintained, submitted, or provided, as specified in § 642.5(a) through (d).

(e) Fail to make a coastal migratory pelagic fish, or parts thereof, available for inspection, as specified in § 642.5(e).

(f) Falsify or fail to display and maintain vessel identification, as specified in § 642.6.

(g) Fish in the EEZ for coastal migratory pelagic fish with prohibited gear or possess any coastal migratory pelagic fish in or from the EEZ aboard a vessel with prohibited gear aboard, as specified in § 642.22(a).

(h) Fish in the EEZ for king or Spanish mackerel with a gillnet with a mesh size less than the minimum allowable, or possess king or Spanish mackerel in or from the EEZ on a vessel that has aboard a gillnet with a mesh size less than the minimum allowable, as specified in § 642.22(b).

(i) Possess a king mackerel, Spanish mackerel, or cobia smaller than the minimum size limits, as specified in § 642.23(a)(1), except for the incidental catch allowance specified in § 642.23(b).

(j) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter a king mackerel, Spanish mackerel, or cobia smaller than the minimum size limits, as specified in § 642.23(a)(2), except for such undersized king and Spanish mackerel that may be lawfully possessed under § 642.23(b).

(k) Possess a king mackerel, Spanish mackerel, or cobia without its head and fins intact, as specified in § 642.23(c).

(l) Operate a vessel with king mackerel, Spanish mackerel, or cobia aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in § 642.23(d) and § 642.24(d).

(m) Retain or possess king mackerel, Spanish mackerel, or cobia in or from the EEZ in excess of the bag and possession limits specified in § 642.24(a)(1), (a)(2), and (b).

(n) Transfer at sea a king mackerel, Spanish mackerel, or cobia taken under a bag or possession limit, as specified in § 642.24(e).

(o) Aboard a vessel in the commercial fishery, fish for king or Spanish mackerel in the EEZ or retain a king or Spanish mackerel in or from the EEZ after a closure, as specified in § 642.26(b)(1), except as may be allowed aboard a charter vessel, as specified in

§ 642.26(b)(2), and except as may be authorized under § 642.22(c).

(p) After a closure specified in § 642.26(a), sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter a king or Spanish mackerel of the closed species/migratory group/zone, as specified in §§ 642.22(c), 642.24(a)(4), and 642.26(b)(3).

(q) Exceed a commercial trip limit for Atlantic group Spanish mackerel, as specified in § 642.27(a).

(r) Transfer at sea an Atlantic group Spanish mackerel subject to a commercial trip limit, as specified in § 642.27(e).

(s) Violate any prohibitions or restrictions for the prevention of gear conflicts that may be specified in accordance with § 642.28.

(t) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

7. Subpart B of part 642 is revised to read as follows:

Subpart B—Management Measures

Sec.

642.20	Fishing years.
642.21	Area and time separation.
642.22	Vessel, gear, and equipment limitations.
642.23	Harvest limitations.
642.24	Bag and possession limits.
642.25	Commercial allocations and quotas.
642.26	Closures.
642.27	Commercial trip limits for Atlantic group Spanish mackerel.
642.28	Prevention of gear conflicts.
642.29	Adjustment of management measures.
642.30	Specifically authorized activities.

Subpart B—Management Measures

§ 642.20 Fishing years.

(a) *Commercial mackerel fisheries.* The fishing year for the Gulf migratory group of king mackerel for commercial allocations and quotas begins on July 1 and ends on June 30. The fishing year for all other groups of king and Spanish mackerel for commercial allocations begins on April 1 and ends on March 31.

(b) *All other fisheries.* The fishing year for the recreational mackerel fisheries, and for coastal migratory pelagic fish other than king and Spanish mackerel, begins on January 1 and ends on December 31.

§ 642.21 Area and time separation.

(a) *King mackerel*—(1) *Summer separation.* From April 1 through October 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending

directly west from the Monroe/Collier County, Florida boundary (25°48'N. latitude) to the outer limit of the EEZ.

(2) *Winter separation.* From November 1 through March 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25'N. latitude) to the outer limit of the EEZ.

(b) *Spanish mackerel.* The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4'N. latitude) to the outer limit of the EEZ.

§ 642.22 Vessel, gear, and equipment limitations.

(a) *Prohibited gear—(1) Drift gillnets.* The use of a drift gillnet to fish in the EEZ for coastal migratory pelagic fish is prohibited. A vessel in the EEZ or having fished in the EEZ with a drift gillnet aboard may not possess any coastal migratory pelagic fish.

(2) *Other gear.* (i) Fishing gear is prohibited for use in the EEZ for migratory groups of king and Spanish mackerel as follows:

(A) King mackerel Gulf migratory group—all gear other than hook and line and run-around gillnets.

(B) Spanish mackerel Gulf and Atlantic migratory groups—purse seines.

(ii) Except for the purse seine incidental catch allowance specified in paragraph (c) of this section, a vessel in the EEZ in an area specified in § 642.21 for a migratory group or having fished in the EEZ in such area with prohibited gear aboard may not possess any of the species for which that gear is prohibited.

(b) *Gillnets—(1) King mackerel.* The minimum allowable mesh size for a gillnet used to fish in the EEZ for king mackerel is 4¾ inches (12.1 cm), stretched mesh. A vessel in the EEZ or having fished in the EEZ with a gillnet aboard that has a mesh size less than 4¾ inches (12.1 cm), stretched mesh, may possess an incidental catch of king mackerel that does not exceed 10 percent, by number, of the total lawfully possessed Spanish mackerel aboard.

(2) *Spanish mackerel.* The minimum allowable mesh size for a gillnet used to fish in the EEZ for Spanish mackerel is 3½ inches (8.9 cm), stretched mesh. A vessel in the EEZ or having fished in the EEZ with a gillnet aboard that has a mesh size less than 3½ inches (8.9 cm), stretched mesh, may not possess any Spanish mackerel.

(c) *Purse seine incidental catch allowance.* A vessel in the EEZ or having fished in the EEZ with a purse

seine aboard will not be considered as fishing or having fished for king or Spanish mackerel in violation of a prohibition of purse seines under paragraph (a)(2) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 642.26(a), provided the catch of king mackerel does not exceed 1 percent or the catch of Spanish mackerel does not exceed 10 percent of the catch of all fish aboard the vessel. Incidental catch will be calculated by both number and weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the allocations and quotas provided for under § 642.25(a) or (b) and are subject to the prohibition of sale under § 642.26(b)(3).

§ 642.23 Harvest limitations.

(a) *Minimum sizes.* (1) Except for the incidental catch allowance for undersized king and Spanish mackerel under paragraph (b) of this section, the minimum size limits for the possession of king mackerel, Spanish mackerel, and cobia in or from the EEZ are—

(i) King mackerel—20 inches (50.8 cm), fork length;

(ii) Spanish mackerel—12 inches (30.5 cm), fork length; and

(iii) Cobia—33 inches (83.8 cm), fork length.

(2) Except for such undersized king and Spanish mackerel that may be unlawfully possessed under paragraph (b) of this section, a king mackerel, Spanish mackerel, or cobia smaller than the minimum size limits of paragraph (a)(1) of this section may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

(b) *Incidental catch allowance.*

Aboard a vessel in the commercial fishery, provided such vessel is not operating as a charter vessel—

(1) The possession of king mackerel under the minimum size limit is allowed equal to 5 percent by weight of the total catch of king mackerel aboard; and

(2) The possession of Spanish mackerel under the minimum size limit is allowed equal to 5 percent by weight of the total catch of Spanish mackerel aboard.

(c) *Head and fins intact.* A king mackerel, Spanish mackerel, or cobia in or from the EEZ must have its head and fins intact through off-loading. Such king mackerel, Spanish mackerel, or cobia may be eviscerated but must otherwise be maintained in a whole condition.

(d) *Operator responsibility.* The operator of a vessel that fishes in the EEZ is responsible for ensuring that king

mackerel, Spanish mackerel, and cobia possessed aboard that vessel comply with the minimum sizes specified in paragraph (a) of this section, except for such undersized king and Spanish mackerel that may be lawfully possessed under paragraph (b) of this section; and are maintained with head and fins intact as specified in paragraph (c) of this section.

§ 642.24 Bag and possession limits.

(a) *King and Spanish mackerel—(1) Daily bag limits.* A person who fishes for king or Spanish mackerel in the EEZ, except a person in the commercial fishery and fishing under a commercial allocation specified in § 642.25(a) or (b), or possessing the purse seine incidental catch allowance specified in § 642.22(c), may not retain or possess king or Spanish mackerel in or from the EEZ exceeding the following daily limits:

(i) *King mackerel Gulf migratory group*—two per person.

(ii) *King mackerel Atlantic migratory group.*

(A) *Northern area*—five per person.

(B) *Southern area*—the limit specified by Florida in Rule 48-12.004, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, but not to exceed five per person.

(iii) *Spanish mackerel Gulf migratory group.*

(A) *Eastern area*—the limit specified by Florida in Rule 48-23.005, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, but not to exceed ten per person.

(B) *Central area*—ten per person.

(C) *Western area*—the limit specified by Texas in Rule 31-85.72, Texas Administrative Code, but not to exceed ten per person.

(iv) *Spanish mackerel Atlantic migratory group.*

(A) *Northern area*—ten per person.

(B) *Southern area*—the limit specified by Florida in Rule 48-23.005, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, but not to exceed ten per person.

(2) *Multi-day possession limit.* A person subject to a bag limit specified in paragraph (a)(1) of this section may not possess in or from the EEZ during a single day, regardless of the number of trips or the duration of a trip, any king or Spanish mackerel in excess of such bag limit, except that a person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided—

(i) Such trip is aboard a charter vessel

(ii) The vessel has two licensed operators aboard as required by the U.S. Coast Guard for trips of over 12 hours; and

(iii) Each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(3) *Areas.* For the purpose of paragraph (a)(1) of this section—

(i) The boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42'45.6"N. latitude) to the outer limit of the EEZ;

(ii) The boundary between the eastern and central areas is a line extending directly south from the Alabama/Florida boundary (87°31'06"W. longitude) to the outer limit of the EEZ; and

(iii) The boundary between the central and western areas is an extension of the boundary between Louisiana and Texas, namely, a line from point A (on the seaward limit of Texas' waters) at 29°32.1'N. latitude, 93°47.7'W. longitude to point B (on the outer limit of the EEZ) at 26°11.4'N. latitude, 92°53'W. longitude.

(4) *Fishing after a closure.* After a closure under § 642.26(a) is invoked for a commercial allocation or quota specified in § 642.25 (a) or (b)(1), for the remainder of the appropriate fishing year for commercial allocations specified in § 642.20(a), the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of king or Spanish mackerel in or from the closed area is prohibited. This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and sold, traded, or bartered prior to the closure and held in cold storage by dealers or processors.

(b) *Cobia.* The daily bag and possession limit for cobia in or from the EEZ is two fish per person, regardless of the number of trips or duration of a trip and without regard to whether the cobia are taken aboard a vessel in the commercial fishery.

(c) *Combination of bag limits.* A person who fishes in the EEZ may not combine a bag or possession limit of this part with any bag or possession limit applicable to state waters.

(d) *Operator responsibility.* The operator of a vessel that fishes in the EEZ is responsible for the cumulative bag limit, based on the number of persons aboard, applicable to that vessel.

(e) *Transfer of fish.* A person for whom a bag or possession limit specified in this section applies may not transfer at sea a king mackerel, Spanish mackerel, or cobia—

(1) Taken in the EEZ; or

(2) In the EEZ, regardless of where such king mackerel, Spanish mackerel, or cobia was taken.

§ 642.25 Commercial allocations and quotas.

A fish is counted against the commercial allocation or quota for the area where it is caught when it is first sold.

(a) *Commercial allocations and quotas for king mackerel.* (1) The commercial allocation for the Gulf migratory group of king mackerel is 2.50 million pounds (1.13 million kg) per fishing year. This allocation is divided into quotas as follows:

(i) 1.73 million pounds (0.78 million kg) for the eastern zone; and

(ii) 0.77 million pounds (0.35 million kg) for the western zone.

(2) The commercial allocation for the Atlantic migratory group of king mackerel is 3.90 million pounds (1.77 million kg) per fishing year. No more than 0.4 million pounds (0.18 million kg) may be harvested by purse seines.

(b) *Commercial allocations for Spanish mackerel.* (1) The commercial allocation for the Gulf migratory group of Spanish mackerel is 4.90 million pounds (2.22 million kg) per fishing year.

(2) The commercial allocation for the Atlantic migratory group of Spanish mackerel is 3.50 million pounds (1.59 million kg) per fishing year.

(c) *Zones.* For the purposes of paragraph 9a)(1) of this section, the boundary between the eastern and western zones is a line extending directly south from the Alabama/Florida boundary (87°31'06"W. longitude) to the outer limit of the EEZ.

§ 642.26 Closures.

(a) *Notice of closure.* The Assistant Administrator, by publication of a notice in the Federal Register, will close the commercial fishery in the EEZ for king mackerel from a particular migratory group or zone and for Spanish mackerel from the Gulf migratory group when the allocation or quota under § 642.25(a) or (b)(1) for that migratory group or zone has been reached or is projected to be reached. The commercial fishery for Atlantic group Spanish mackerel is managed under the commercial trip limits specified in § 642.27 in lieu of the closure provisions of this section.

(b) *Fishing after a closure.* After a closure under paragraph (a) of this section is invoked, for the remainder of the appropriate fishing year for commercial allocations specified in § 642.20(a):

(1) A person aboard a vessel in the commercial fishery may not fish for king or Spanish mackerel in the EEZ or retain

fish in or from the EEZ under a bag limit specified in § 642.24(a)(1) for the closed species/migratory group/zone, except as provided for under paragraph (b)(2) of this section.

(2) A person aboard a vessel the permit for which indicates both king and Spanish mackerel and charter vessel for coastal migratory pelagic fish may continue to retain fish under a bag and possession limit specified in § 642.24(a)(1) and (a)(2) provided the vessel is operating as a charter vessel.

(3) The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of king or Spanish mackerel of the closed species/migratory group/zone, is prohibited. This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and sold, traded, or bartered prior to the closure and held in cold storage by dealers or processors.

§ 642.27 Commercial trip limits for Atlantic group Spanish mackerel.

(a) Commercial trip limits are established for Atlantic group Spanish mackerel as follows:

(1) In the northern zone, that is, north of a line extending directly east from the Georgia/Florida boundary (30°42'45.6"N. latitude) to the outer limit of the EEZ, Spanish mackerel in or from the EEZ may not be possessed aboard or landed from a vessel in a day in amounts exceeding 3,500 pounds (1,588 kg).

(2) In the southern zone, that is, south of a line extending directly east from the Georgia/Florida boundary (30°42'45.6"N. latitude) to the outer limit of the EEZ, Spanish mackerel in or from the EEZ may not be possessed aboard or landed from a vessel in a day—

(i) From April 1 through November 30, in amounts exceeding 1,500 pounds (680 kg).

(ii) From December 1 until 80 percent of the adjusted allocation is taken, in amounts as follows:

(A) Mondays, Wednesdays, and Fridays—unlimited.

(B) Tuesdays and Thursdays—not exceeding 1,500 pounds (680 kg).

(C) Saturdays and Sundays—not exceeding 500 pounds (227 kg).

(iii) After 80 percent of the adjusted allocation is taken until 100 percent of the adjusted allocation is taken, in amounts not exceeding 1,000 pounds (454 kg).

(iv) After 100 percent of the adjusted allocation is taken until the fishery is closed in accordance with § 642.26(a), in amounts not exceeding 500 pounds (227 kg).

(b) For the purpose of paragraph (a)(2) of this section, the adjusted allocation of Atlantic migratory group Spanish mackerel is 3.25 million pounds (1.47 million kg). The adjusted allocation is the commercial allocation for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic group Spanish mackerel at the rate of 500 pounds (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. The Assistant Administrator, by publication of a notice in the Federal Register, will announce when 80 percent and 100 percent of the adjusted allocation is reached or is projected to be reached.

(c) For the purpose of paragraph (a)(2) of this section, a day starts at 6 a.m., local time, and extends for 24 hours. For example, Monday starts at 6 a.m. on Monday and extends to 6 a.m. on Tuesday. A vessel that terminates a trip prior to 6 a.m., but retains Spanish mackerel aboard after that time, will not be considered to possess Spanish mackerel in excess of the daily limits provided the vessel is not underway after 6 a.m. and such Spanish mackerel are unloaded prior to 6 p.m. following termination of the trip.

(d) A person who fishes in the EEZ may not combine a trip limit of this

section with any trip or possession limit applicable to state waters.

(e) A person for whom a trip limit specified in this section applies may not transfer at sea a Spanish mackerel—

(1) Taken in the EEZ; or

(2) In the EEZ, regardless of where such Spanish mackerel was taken.

§ 642.28 Prevention of gear conflicts.

In accordance with the procedures and restrictions of the Fishery Management Plan for Coastal Migratory Pelagic Resources, when the Regional Director determines that a conflict exists in the king mackerel fishery between hook-and-line and gillnet fishermen in an area of the EEZ off the east coast of Florida between 27°00.6'N. latitude and 27°50.0'N. latitude, the Regional Director may prohibit or restrict the use of hook-and-line and/or gillnets in all or a portion of that area. Necessary prohibitions or restrictions will be published in the Federal Register.

§ 642.29 Adjustment of management measures.

In accordance with the procedures and limitations of the Fishery Management Plan for Coastal Migratory Pelagic Resources, the Regional Director may establish or modify for cobia or for king or Spanish mackerel, and migratory groups of king or Spanish mackerel, the

following: maximum sustainable yield, total allowable catch, allocations, adjusted allocations, quotas, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and initial permit requirements.

§ 642.30 Specifically authorized activities.

The Assistant Administrator may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

8. The two grids constituting Figure 3 of appendix A are transferred out of appendix A and redesignated as Figure 1 to part 642 and Figure 2 to part 642, respectively; the heading for newly designated Figure 1 is revised to read "FIGURE 1 TO PART 642—STATISTICAL GRIDS FOR THE GULF OF MEXICO" and the title at the bottom of the figure is removed; a heading is added to newly designated Figure 2 to read "FIGURE 2 TO PART 642—STATISTICAL GRIDS FOR THE SOUTH ATLANTIC AND MID-ATLANTIC" and the title at the bottom of the figure is removed; and Appendix A is removed.

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